



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

RCH/SPN/HDM/CRH  
F. #2018R01309

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September 21, 2022

By ECF

The Honorable Brian M. Cogan  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Thomas Joseph Barrack, et al.  
Criminal Docket No. 21-371 (S-1) (BMC)

Dear Judge Cogan:

The government respectfully submits this letter to request that the Court direct the defendants to provide a copy of their proposed opening PowerPoint presentations, if any, forthwith, and in no event later than tomorrow morning at 9:30 AM, so that the government may raise any appropriate objections. The government further respectfully requests that any such objections be adjudicated before the start of the government's opening statement, to ensure that there is no delay and related waste of the jurors' time between the government's opening statement and the start of the defense openings.

The government had heard nothing from the defense about the proposed use of a PowerPoint deck or slides, and therefore had assumed that the defense would not be using any such demonstratives, particularly since no defense exhibits have been ruled admissible (the government does not intend to use slides during its opening). The government notes that it has received proposed exhibits from defense counsel over the course of the past few days that are plainly inadmissible at trial. In an abundance of caution, the government wrote to defense counsel earlier tonight, on the eve of opening statements, to request any slides that the defense intended to use. The defense has declined to provide the slides to the government (after declining to give the basic courtesy of notice that it intended to use such slides). Defense counsel informed the government that, after speaking with attorneys with experience before your Honor, they understand that your practice is to have the defendants provide the government with copies of the slides only after the completion of the government's opening statement.<sup>1</sup> The government is aware of no such practice but of course defers to the Court's instruction on the matter.

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<sup>1</sup> Defense counsel has also declined to identify the attorney or attorneys who advised of such practice.

The government respectfully submits that the Court and the government should receive advance notice of any proposed use of slides or other demonstrative materials so that the Court may make a determination as to whether the materials may be shown to the jury before any evidence has been received. A lack of notice to the Court and government invites error, as it runs the risk that the jurors will be shown inadmissible, unduly prejudicial, or otherwise objectionable material that should not be a part of the trial. See, e.g., United States v. O'Sullivan, 20-CR-272 (PKC) (E.D.N.Y.), Trial Tr. at 846 (Attached hereto as Exhibit A) ("This is not closing. It's an opening. And for the defense to present to the jury what is maybe going to come in as evidence, without letting me know so that I could give some sort of caution, as I did just now that it's not yet evidence, and it's an opening statement, not an argument about evidence that was already introduced, is inexcusable."); United States v. Gatto, No. 17-CR-686 (LAK) (S.D.N.Y.), Trial Tr. at 73, (attached hereto as Exhibit B), ECF Dkt. No 245 ("Mr. Schachter: I know in your Honor's last trial in opening statements the government used a PowerPoint and we anticipated that the government would be using – The Court: And I knew in advance and the defense knew in advance and it was all approved. This is a stunt and it's unprofessional."). The government is particularly troubled not to have received advance notice from counsel for Mr. Barrack, given counsel's prior experience with this very issue, as reflected in the transcript attached at Exhibit B.

The government respectfully submits, moreover, that it would serve the interests of trial efficiency to adjudicate any challenges to the proposed slides before opening statements begin, to avoid the prospect of a sidebar conference or the need to remove the jury from the courtroom immediately after the government's opening statement.

Accordingly, the government respectfully requests that the Court direct defense counsel to provide the government with its opening statement slides as soon as possible and in no

event later than 9:30 tomorrow morning so that the government may raise any objections or concerns with the Court in advance of opening statements.

Respectfully submitted,

BREON PEACE  
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Clerk of the Court (BMC) (by ECF)